

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMPENSATION PROGRAMS
DIVISION OF ENERGY EMPLOYEES' COMPENSATION



Dear Mr.

This letter is in reference to your claim for compensation under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act). We have reviewed the claim and found that you were diagnosed with Kidney Cancer.

As part of the claim adjudication process, evidence must be presented to establish a relationship between exposure to a toxic substance and an employee's illness or death. A "toxic substance" is defined as any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature. Moreover, the Act requires a finding that it is "at least as likely as not" that such exposure at a covered facility during a covered time period was a significant factor in aggravating, contributing to, or causing the employee's illness or death, and that it is "at least as likely as not" that exposure to a toxic substance(s) was related to employment at a facility for compensation to be paid.

To assist in the resolution of claims and aid claimants in perfecting their claims the Division of Energy Employees Occupational Illness Compensation (DEEOIC) employs numerous venues to assist you with proving your claim. In addition to requesting records from the people who file claims, we also take a variety of behind the scenes actions to obtain employment or medical records. This includes but is not limited to requesting records from other agencies such as the Department of Energy (DOE) or Social Security Administration. In your case we requested and received records and statements from private companies, unions, and DOE. We will also requested and received available medical records or and we may will seek the opinion of medical specialists to determine the correct diagnosis or to show the relationship of a condition to exposures that may have occurred while employed at one of these facilities.

In addition to requesting records, we also have other tools at our disposal to help establish a claim. For instance, our local resource centers will conduct occupational history interviews to identify the specific places of employment and to obtain toxic exposure information, however; in your case an occupational history questionnaire was completed by you on September 24, 2004. We also search our computer databases for information about the worksites and the toxins that may have been present at those sites. To assist in the resolution of claims, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) Site specific toxic material and exposure data is also being collected and organized in a Site Exposure Matrix (SEM) that enables our claims staff to quickly verify both the type of illness linked to toxic exposures and the actual biological and chemical toxins that existed at different work sites and access to the National Library of Medicine (Haz-Map).

Upon review of the evidence provided with your claim, the claimed kidney cancer is not scientifically recognized as having a known relationship to exposure to a toxic substance. A careful review of the SEM, Haz-Map, DOE records, medical evidence submitted, industrial hygiene reports, exposure reports, hazard assessment data and the an occupational history provided by the employee on September 24, 2004 there is insufficient evidence to show that the employee's exposure to workplace toxic substances, while employed at the Y-12 site, was a significant factor that "at least as likely as not" caused contributed to, or aggravated the claimed illness of kidney cancer.

The following medical evidence was submitted with your claim and reviewed. A pathology report dated December 10, 2003, diagnosed right renal tumor. A narrative medical report from Dr. Donald S. Acuff stated right renal tumor, renal cell carcinoma. Pre and Post Operative reports dated December 10, 2003 for a hand assisted laparoscopic partial nephrectomy. Numerous diagnostic tests and results. Lockheed Martin/Martin Marietta/BWXT-Y-12 physical examination and fitness reports spanning from February 1977 to June 1998 and private physician notes from Kingston Family Practice, Dr. R. Wilson of Kingston, TN and the On-Call Medical Services Center in Oak Ridge TN spanning from March 1977 to March 1998 and immunization records dated October 1967 to September 1972. Of particular interest was a medical narrative dated 12/10/2003 noted under family history: ... "positive for renal cell in father and sister"... If this statement was included by Dr. Harris in error please contact the physician so he can clarify this statement.

The file also contained the following documents which were reviewed during the development process:

Occupational/Exposure History dated March 25, 1998, Dosimetry printouts dated January 01, 1989 to March 23, 2004, Bio-assay history reports and printouts of the same aforementioned dates. Hazard assessment data for 9201-5N machinist supervisor/managers, which denoted the following hazards - ergonomic concerns, heat stress, noise, beryllium and compounds. Facility Industrial Hygiene Records note from October 1967 to March 25, 1998 known hazards as Solvents and Noise. Medical Occupational Health Information printout also noted Chlorine, Cutting Oils, Dusts (wood, coal, grain cotton, stone, fibers) Engine Exhaust, Metals (mercury, nickel), Methylene Chloride, Noise (loud), Paints, Pesticides, Radiation, Trichloroethylene.

After an exhaustive review of all the evidence in file we are still in need of further evidence in support of the claim. In particular, it is necessary to submit factual or medical documentation to show a relationship between the claimed medical condition(s) and exposure to a toxic substance.

Kidney Cancer for claims involving a diagnosed cancer, be aware the DEEOIC will process the claim for a determination of causation based on radiation exposure. There are two methods to establish causation due to radiation exposure. The first is a determination of causation based upon a dose reconstruction performed by the National Institute for Occupational Safety and Health (NIOSH). Depending on the level and extent of radiation exposure reported in a dose reconstruction, the type of cancer diagnosed, and other factors, a probability of causation (POC) is assessed. POC is a calculation of the likelihood that a diagnosed cancer is a result of radiation exposure. Any POC equal to or greater than 50% results in a finding that radiation caused a diagnosed cancer.

The DEEOIC has processed your claimed cancer based on the POC process. However, a recommended decision regarding a POC less than 50% has already been issued. This means

that radiation was not accepted as the cause of the diagnosed cancer. As such, to pursue a claim under Part E of the Act, evidence must show that the cancer is due to some other biological or chemical exposure. If you believe that the diagnosed cancer is affiliated a biological or chemical exposure, you must present evidence to substantiate such a connection. Which has not previously been submitted.

This letter is meant to afford you the opportunity to submit relevant and substantive information in support of your claim. Under the Act, it is ultimately your responsibility to submit the necessary information to establish a claim under the EEOICPA.

What I need from you:

1. Any factual or medical evidence that can be used to establish the claimed occupational illness (Kidney Cancer) has a known link to a radiological, biological, or chemical substance exposure.
2. Any additional information that you may possess which has not previously submitted regarding the exposure to a specific type of toxin(s) that occurred at the work site. Our office has already contacted and received information from the Department of Energy.

A period of 30 days is granted for you to provide a response to this letter. If you need additional time to collect relevant evidence with regard to your claim, please contact your assigned claims examiner. Reasonable requests for an extension of the 30 days will be granted. Otherwise, after the expiration of thirty days, the DEEOIC will proceed with an evaluation of your case and the issuance of a recommended determination.